

## **Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources**

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This overview of civilian oversight describes various oversight models. Its objectives are the following:

- To describe the different models of civilian oversight found in the U.S., and how each functions to improve policing and increase trust between communities and law enforcement agencies;
- To outline some strengths and weaknesses of each model;
- To identify predictable challenges to oversight in its early years in a community;
- To describe where/how to start to initiate oversight in a community;
- To describe the use of public documents to provide community education;
- To identify three critical problems in the oversight process and how to avoid them;
- To identify resources available to oversight practitioners.

### Civilian Oversight Models in the United States: Similarities, Differences and Expectations

Investigating allegations of police abuse of power is necessary duty in a democracy, a difficult task that requires detailed work inside and outside of law enforcement agencies.

*"The control [of such abuses]. . . presents a dilemma. If the monitoring influence comes from outside the police, it tends to rouse the opposition of police managers as well as the rank and file; without some cooperation from within, then, it is nearly impossible for the outsiders to investigate, and any policy recommendations they make are liable to be ignored. On the other hand, if the control is exclusively internal, it tends to become socialized to existing mores in the department and to be ineffective. . . . Real accountability will have to combine internal and external controls."* Edge of the Knife, Paul Chevigny, p 267

Civilian Oversight has three principle models. Each can be linked to a component of Chevigny's ideal police accountability model. Each oversight model has strengths and weaknesses. Any model can be effective as long as the community maintains the political will to make the model effective. This requires adequate funding, patience, and painstaking, detailed work by citizens whether or not a community is in a crisis. Oversight will fail, if the community fails to maintain the political will to maintain it after a crisis passes. This requires hard, unglamorous, and often boring attention to detail.

The common oversight models in the U.S. are

- the independent, investigative model; independent investigations can be conducted by individual investigators or by appointed Boards/Commissions.
- the monitoring model; monitoring models can be conducted by individual monitors or by appointed Board/Commission.
- the outside auditor/ ombudsman model, with the auditor/ombudsman having power to compel evidence from the law enforcement agency; outside auditors/ombudsman models are generally performed by individuals, not Boards/Commissions.

Each model derives *its authority and powers from the implementing law(s), ordinance(s), and/or charter of its jurisdiction* (typically its city or county). These powers may be further defined by case law in a jurisdiction; *case law is created when the courts are asked to make determinations based on conflicting interpretations of the models power and authority*. Examples of issues that may be determined by case law in a jurisdiction: Whether a jurisdiction has subpoena powers; whether it conducts open or closed hearings; whether it issues reports that identify subject officers or not.

Since the 1990s, some jurisdictions have begun implementing multiple models such as a jurisdiction using an Independent Auditor and a Board or Commission that monitors the work of the Independent Auditor. As of this revision, examples of multiple model jurisdictions include but are not limited to Los Angeles County CA; Denver Colo; Phoenix, AZ; and Seattle, WA.

In addition, **hybrid models** emerge, such as a model that monitors internal affairs investigations and may have the power to investigate in certain circumstances.

**Diluted models** also emerge, such as an inadequately funded investigative model; a monitoring model whose training is dictated by the department it oversees, or an auditor without the power to compel evidence from the subject department.

## Three Models of Civilian Oversight Commonly Found in the U.S.

	<b>Investigative Model</b>	<b>Monitoring Model</b>	<b>Auditor/Ombudsman Model with the power to compel evidence</b>
Description	<p>An individual or a Board / Commission is authorized to investigate complaints; make findings; &amp;, in some cases, based on the findings make recommendations to the law enforcement administration regarding discipline and/or policy.</p> <p>Fully funded Boards/Commissions have adequate staff to assist them in the conduct of investigations.</p> <p>Inadequately funded investigative models dependent on volunteers' labor will have grave difficulty conducting adequate investigations.</p>	<p>An individual or a Board / Commission is authorized to review Internal Affairs investigations of complaints; find them adequate or not; and state whether it agrees or disagrees with the IA findings. It may recommend further investigation; it may make policy recommendations.</p> <p>Fully funded Boards/Commissions have adequate staff to assist them in the monitoring of investigations.</p>	<p>An individual reviews complaints and Internal Affairs investigations. The monitor may also have the authority to conduct investigations not generated by complaints, such as a death that occurs in connection with a peace officer's actions.</p> <p>If an IA investigation is deficient, the auditor may ask for further investigation or may be authorized to conduct an independent investigation.</p> <p>Fully funded Auditor/Ombuds have adequate trained staff to assist them in their duties.</p>
Function	<p><u>Produce an Independent Investigation; make findings &amp; recommendation; give citizen, the public and department information.</u></p> <p><u>Provide firm, fair, consistent external investigations</u> in order to help law enforcement agency better provide firm, fair, consistent law enforcement services, and better management.</p>	<p><u>Identify adequate vs inadequate Internal Affairs investigations; direct department to take corrective action. Improve quality of IA Investigations.</u></p> <p><u>Provide firm, fair, consistent internal reviews of IA investigations</u> in order to help law enforcement agency better provide firm, fair, consistent law enforcement services, and better management.</p>	<p><u>Identify, monitor and in some cases investigate problems/ complaints; draw conclusions; make findings/recommendations; conduct audits.</u></p> <p><u>Provide firm, fair, consistent internal reviews and/ or external investigations</u> in order to help law enforcement agency better provide firm, fair, consistent law enforcement services, and better management.</p>
Strengths	<p>Credibility of the citizens who conduct the investigations</p> <p>Model can give complainants &amp; community a greater sense of participation and a sense the decision is</p>	<p>Credibility of the citizens who monitor the IA</p> <p>Model can produce findings faster than investigative model, and can provide more citizens' input than</p>	<p>Credibility of the citizen auditor</p> <p>An auditor can operate more flexibly and freely than a Board; may have a broader mission than monitoring/investigating complaints.</p>

	<p>made outside the PD</p> <p>To maintain its integrity, investigative model needs members/staff with sufficient knowledge, ability and training to conduct competent investigations. In addition, it needs</p> <ul style="list-style-type: none"> <li>-ability to compel evidence (subpoena);</li> <li>-funding sufficient to fully investigate;</li> <li>-accessible, open public hearings;</li> <li>-due process for officers.</li> </ul>	<p>auditor model.</p> <p>To maintain its integrity, monitoring model needs to have sufficient knowledge, ability and training to identify problems in Internal Affairs investigations.</p>	<p>Auditor must have the authority to compel evidence from the department, and adequate funding to carry out duties.</p>
Weaknesses	<p>Much time/labor required of volunteers.</p> <p>If members/ staff are inadequately skilled and/or trained, poor quality investigations result.</p> <p>Adversarial process.</p>	<p>Much time/labor required of volunteers.</p> <p>If Internal Affairs process is inadequate, and Board is inadequately skilled and/or trained to examine, then Board may not recognize problems in Investigations.</p> <p>Because it works with the IA investigations, this model is more vulnerable to being co-opted, though all models can be.</p>	<p>Depends on the skills, abilities and commitment of one person. Continuity of quality may become a problem.</p> <p>Public may want more than one person's oversight.</p>
Examples:	<p>See Investigative Models as described on the Roster of US Oversight Agencies on the NACOLE.org website.</p>	<p>See Monitoring Models as described on the Roster of US Oversight Agencies on the NACOLE.org website.</p>	<p>See Auditor/Ombudsman Models as described on the Roster of US Oversight Agencies on the NACOLE.org website.</p>

## Predictable Challenges to the Oversight Process in Its Early Years in a Community

Regarding independent oversight models, Police Oversight expert, Paul Chevigny, teaches us in The Edge of the Knife: Police Oversight in the Americas:

*If the monitoring influence comes from outside the police, it tends to rouse the opposition of police managers as well as the rank and file; without some cooperation from within, then, it is nearly impossible for the outsiders to investigate, and any policy recommendations they make are liable to be ignored.*

Whatever model a jurisdiction selects, whether it is independent investigation or internal monitoring, whether it be a Board or Commission or an individual monitor / auditor / ombuds, expect the process to face opposition from police managers and their political base; and from rank and file officers and their employee organizations. Any models may be called "toothless," if it does not have the power to impose discipline. *Remember, in implementing oversight jurisdictions are imposing change on their law enforcement agencies and change is very difficult. Opposition would be unnecessary if a model were really "toothless."*

Opposition may look like this:

- Inadequate funding or subsequent de-funding;
- Disparagement of the Auditor, Board Members or staff;
- Attempts to convince the public that police issues are so complicated only police officers or attorneys can Understand them;
- Suits from employee groups to stop it;
- Attempts to pack a Board with police supporters or let Boards dwindle so no quorum is possible;
- Pressure to close processes / information dissemination that can be open.

From the community (including elected officials, media, and those who become Board Members and staff) expect:

- An oversight process that is quickly up and running at full speed;
- If oversight is the result of a vote, people believe that the "work" is over when the election is successful;
- Some Board, staff and political leadership to burnout when it doesn't happen fast enough.

Minimize the opposition and disappointment by educating all parties to *expect* the process will take time, and to expect it will face challenges. This does not mean it's not working; *it means it means the work is beginning.*

Remember:

- When establishing evaluation processes, be sure to examine if the kinds of incidents or conditions that led to establishing oversight are still occurring. This is critical information.
- Oversight is as good as a community's sustained commitment to it, and citizens' sustained, patient commitment to put in hours *whether or not* the police/community relations are in a crisis.

## Where/How to Start

When police administrators and supervisors handle officers' errors or misconduct appropriately, the community is generally satisfied. Typically, communities implement oversight when they believe law enforcement administrators have failed to adequately manage and supervise a department.

Take the problems to the Subject Department and ask to be heard.

- Become curious about the department. Ask and learn.

Learn your Public Records and Public Meeting Laws. Some records are withheld that could be released. They may be released if requested pursuant to the laws.

Learn from other jurisdictions.

- Read the records and reports where oversight is already established;
- Read the oversight academics' research and journal articles;
- Build your local oversight library of resources; help others in your community.

Construct "institutional memory" of the problems that mobilized you:

- Begin and maintain a chronology of the kinds and numbers of incidents that have led the community to want oversight;
- Learn what your jurisdiction is paying in civil liability for police errors or misconduct; and learn how to link oversight to risk management;
- When the Subject Department makes progress, publicize it.

Educate the community about the police, and the police about the community;

- Do specific outreach to those in your community most apt to have problems with the police; teach them how to behave in police interactions and how an officer is to behave; teach them how to make a complaint; teach them how to be a witness.

Prioritize the problems in your jurisdiction; determine the energy and time limitations of the community members who will work on this. Build your strategies on this.

### Use of Public Documents and Open Processes in Oversight

Whatever your model, you will prepare various public documents such as Agendas, Minutes, and Reports. Draft all public documents recognizing they can also be used to educate the community and subject department. Read other jurisdictions documents; you will be able to adapt a great deal to your process.

**Produce clear documents that are interesting, and contain significant information about oversight and law enforcement in your jurisdiction. The clearer, more “user friendly” your documents are, the more they will be read, and the readers will learn and understand the process.**

Examples:

**Annual Reports:** Annual Report of the San Jose [Calif.] Independent Auditor;  
Semi-Annual Reports of Special Counsel to the Los Angeles Board of Supervisors

**Public Meeting Agendas and Minutes:** San Diego County Citizens’ Law Enforcement Review Board

### Three Critical Mistakes to Avoid in Order to Maintain Credibility

*“The credibility of oversight depends on people conducting oversight being carefully informed. The formula to correct resistance to oversight is utter competence. Your work will create your credibility.”*

*Merrick Bobb, NACOLE 1999 Conference*

The 3 critical mistakes every model of oversight must strive to avoid are

- Failure to be adequately prepared and informed as to the relevant case details and governing policies and laws;
- Over-identification with the community / complainant;
- Over-identification with the police.

## Credible oversight comes from the center of this continuum

Over Identification with Community	Not Identified with Community or Police; Respect toward Both; Constructive Tension.	Over Identification with Police
<p>Disrespectful, overheated rhetoric in discussions with police. Assume police are wrong.</p> <p>Failure to learn the details sufficiently and know the legal issues clearly Assume police did what they are accused of.</p>	<p>Fair, firm, consistent dialogue over clearly defined issues. Respectful without assuming subordinate role Unblinking attention to the issues</p> <p>We model –for police and community-- the behavioral changes we seek.</p> <p>Assume that either version may be true, Exaggerated, falsified or merely mistaken;</p> <p>We can't know until we examine the evidence.</p>	<p>Too cozy with police; Assume police are right. Assume military models apply to policing ("It's war;" "Enemies")</p> <p>Assume complainants have ulterior motives. Assume police "could not have" done what they're accused of.</p>

To Avoid Over Identification with Community	To Maintain the Middle Ground	To Avoid Over Identification w Police
<p>Recognize &amp; address your biases.</p> <p>Do Ride-a-longs; Attend Academy Classes; Ask Questions; Read Policies.</p> <p>Obtain the varieties of training described in the middle column</p>	<p>From Mr. Bobb's comments at the 1999 NACOLE Conference:</p> <p>Obtain training from prosecutors; city/county attorneys; police unions, civil liberties experts and plaintiffs' attorneys. Learn how they analyze liability cases.</p> <p>Obtain training from force experts; ask doctors &amp; nurses how they evaluate injuries.</p> <p>Ask judges for training in how they evaluated uncorroborated conflicting testimony. Learn the discipline system your law enforcement agency uses and how to apply it.</p> <p>Look for patterns. If you have trouble making a decision, write out the reasons you cannot decide. <b>Do not hesitate to question policies.</b></p>	<p>Recognize and address your biases.</p> <p>Obtain as much training OUTSIDE the Police Agency as you obtain within the agency;</p> <p>Obtain the varieties of training described in the middle column</p>

## **Internet Resources:**

### **The National Association for Civilian Oversight of Law Enforcement, (NACOLE) at NACOLE.org**

The sole U.S. Association of and for oversight professionals, NACOLE maintains NACOLE.org for oversight practitioners and for jurisdictions interested in fostering police oversight and public trust.

NACOLE hosts an annual conference where oversight practitioners gather to identify best oversight practices. NACOLE also maintains a ListServe of news articles to allow oversight practitioners to keep up with oversight and policing issues throughout the country. <http://nacole.org>

### **Police Assessment and Resource Center, (PARC) at PARC.info**

The internationally recognized PARC maintains an excellent and thorough collection of resources on police accountability, oversight and reform in the U. S. This web page can be found at <http://parc.info/publications.html>

PARC.info provides Issues Reports that are models of how to craft analyses of various issues oversight bodies must examine. The PARC Newsletter highlights informative interviews with Police Accountability experts and law enforcement leaders in the U.S. It also provides those documents that have defined police accountability issues over the past twenty years, including reports such as the Christopher Commission and Kolts Commission reports, and a history of civilian oversight in the U.S.

## **Non-Internet Resources:**

**American Bar Association, Justina Cintron Perino, Editor, 2006, Citizen Oversight of Law Enforcement.**

**Chevigny, Paul, Edge of the Knife, Police Violence in the Americas, 1996.**

This book describes conditions from New York City to Los Angeles, and from the U.S. to Brazil. The concluding chapter outlines an oversight model that ideally incorporates internal and external oversight to provide safety and service to citizens and police.

**Walker, Samuel, The New World of Police Accountability, 2005.**

**Walker, Samuel, Police Accountability: The Role of Citizen Oversight, 2001.**